

Case No. 19 CV 35 (BKS)(CFH)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MIKE DIEDERICH JR., *et al.*,

Plaintiffs,

- against -

LETITIA JAMES, *et al.*,

Defendants.

**REPLY MEMORANDUM OF LAW IN FURTHER
SUPPORT OF THE MOTION TO DISMISS OF THE
CHANCELLOR OF THE NYC DEPARTMENT OF
EDUCATION AND BILL DE BLASIO, NEW YORK
CITY MAYOR**

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Matter No. 2018-075329

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PRELIMINARY STATEMENT

On March 22, 2019, Defendants Chancellor of the NYC Department of Education (“NYCDOE Chancellor”) and Bill de Blasio, New York City Mayor (“NYC Mayor”), (collectively, “City Defendants”) moved to dismiss the Amended Complaint of Plaintiff Mike Diederich and the fictitious minor Doe Plaintiffs in this action on the grounds that (1) *pro se* Plaintiff Diederich lacks standing and this action is unripe; (2) Plaintiff Diederich lacks prudential standing; (3) Plaintiffs’ Amended Complaint violates Rule 8 of the Federal Rules of Civil Procedure; (4) Plaintiff Diederich cannot bring claims on behalf of other unrepresented and fictitious minor parties; (5) the Court lacks personal jurisdiction over City Defendants due to insufficient process and insufficient service of process; and (6) Plaintiffs’ state-law claims fail as a matter of law.

On April 15, 2019, Plaintiff Diederich filed his opposition to City Defendants’ Motion and to the motions to dismiss made by the other defendants. (ECF No. 16.) In his Opposition, Plaintiff Diederich stated that he “had hoped to have one or more Hasidic parents or children as co-plaintiffs, yet this has not come to pass.” (ECF No. 16, at 2.) Plaintiff Deiderich then stated that he “withdraws all federal claims contained within the Amended Complaint” and sought “remand [of] this case back to the N.Y.S. Supreme Court, Albany County” (ECF No. 16, at 2.) Plaintiff Diederich further stated his intention, on remand to the Supreme Court, to “withdraw all state law claims . . . with the sole exception being the Thirteenth Cause of Action seeking injunctive and other taxpayer relief against the N.Y.S. Comptroller” (*Id.*)

In light of Plaintiffs’ response to the Motion, City Defendants respectfully request that this Court decline to remand any state-law claims, dismiss Plaintiffs’ Amended Complaint in its entirety, deny any and all relief sought therein, and grant such other and further relief to City Defendants as the Court deems just and proper.

ARGUMENT

POINT I

**PLAINTIFF FAILS TO OPPOSE THE
ARGUMENTS MADE IN CITY
DEFENDANTS' MOTION TO DISMISS.**

By stating that he “withdraws all federal claims, because no Hasidic plaintiff has joined this lawsuit to provide a strong grounds for standing,” (ECF No. 16, at 3,) and by failing to oppose City Defendants’ arguments regarding his own standing or the ripeness of this action, Plaintiff Diederich concedes that he lacks prudential standing and that this Court lacks Article III subject matter jurisdiction over this action.

Plaintiff also fails to oppose City Defendants’ arguments regarding the prolix and lengthy Amended Complaint, the inability of Plaintiff Diederich to assert claims on behalf of the fictitious minor Doe Plaintiffs, Plaintiffs’ insufficient process and insufficient service of process upon City Defendants, Plaintiffs’ failure to serve a notice of claim upon City Defendants, and Plaintiffs’ failure to exhaust their administrative remedies before the Commissioner of Education. The Court should therefore consider City Defendants’ Motion to Dismiss unopposed and dismiss the Amended Complaint in its entirety for lack of subject matter and personal jurisdiction. *See Levy v. N.Y. State Dep’t of Env’tl. Conservation*, 297 F. Supp. 3d 297, 316 (N.D.N.Y. 2018) (noting that when a party fails to oppose a motion, the motion “need only have facial merit” to succeed) (quoting *Am. Honda Fin. Corp. v. V.M. Paolozzi Imports, Inc.*, 10-CV-0155, 2012 U.S. Dist. LEXIS 198978, at *23 (N.D.N.Y. Mar. 29, 2012)). City Defendants’ Motion has clear facial merit and therefore should be granted.

POINT II

**THE COURT SHOULD NOT REMAND THIS
ACTION TO STATE COURT.**

As noted, Plaintiff Diederich stated his intention to “withdraw all state law claims . . . with the sole exception being the Thirteenth Cause of Action seeking injunctive and other taxpayer relief against the N.Y.S. Comptroller” (ECF No. 16, at 2) Even if he did not have such intentions, Plaintiff failed to effectuate adequate service of process on City Defendants within 120 days of the filing of either the Complaint or the Amended Complaint in the Supreme Court, as required by New York law. N.Y. C.P.L.R. § 306-b (Consol. 2019). In light of Plaintiff’s intentions to withdraw the state-law claims against City Defendants and his failure to serve them properly and in the designated timeframe, a remand of any state-law claims in this action to the New York Supreme Court would be wasteful of the resources of the parties and of the New York judiciary and would be futile. The Court should therefore dismiss all claims against City Defendants.

CONCLUSION

WHEREFORE, the Chancellor of the New York City Department of Education and Bill de Blasio, Mayor of the City of New York, respectfully request that this Court dismiss Plaintiffs' Amended Complaint in its entirety, deny any and all relief sought therein, and grant such other and further relief to NYCDOE Chancellor and the NYC Mayor as the Court deems just and proper.

Dated: April 22, 2019
New York, New York

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